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September 22, 2005

RECEIVED

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW, Room 8B201
Washington, DC 20554

SEP 22 2005

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Federal Communications Commission
Office of Secretary

Re: Cox Communications, Inc. and Its Affiliates
WC Docket No. 05-196
Subscriber Acknowledgment Report – September 22, 2005

Dear Ms. Dortch:

I am writing this letter on behalf of our client Cox Communications, Inc. and its affiliates (collectively "Cox"), to provide information pursuant to the Commission's August 26, 2005 Public Notice (the "Notice") in the above-referenced proceeding. As detailed in our September 1, 2005 letter, Cox has made extraordinary efforts to comply with the rules and to obtain acknowledgements from its VoIP subscribers, in spite of an ever-growing level of annoyance and irritation from the subscribers. Cox can say with complete certainty that every Cox VoIP subscriber has received at least one notification containing the information required by the E911 rules.

As noted previously, Cox's affiliates provide switched telephone service to more than 1.5 million residential subscribers and 150,000 commercial locations across eleven states, using a mix of circuit switched and Internet Protocol technologies, and Cox's affiliates are certificated as local exchange carriers in each of those states. Cox's VoIP technology is engineered to the same reliability standard as Cox and other carriers' circuit-switched services. All Cox customer equipment used for VoIP contains an 8-hour backup battery, at no additional charge. Additionally, Cox's VoIP service is sold as a stationary service and is not intended for nomadic use. Cox always has provided its subscribers with access to E911 (in areas where E911 is available) for both circuit switched and Internet Protocol telephone services, and its Internet Protocol telephone service already complies with the substantive requirements of the new rules. In that context, Cox provides the following information:

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REDACTED – FOR PUBLIC INSPECTION

1. *A detailed explanation about current compliance if the provider did not notify and issue warning stickers to 100 percent of its subscribers by July 29, 2005.*

As reported in Cox's August 10, 2005 and September 1, 2005 letters to the Commission, Cox provided notification and warning stickers to 100 percent of its subscribers by July 29, 2005

2. *Quantification of subscribers that have returned acknowledgments and estimate of percentage of subscribers from whom acknowledgments will not be received by September 28.*

On the heels of the devastation, displacement and upheaval in Cox's Louisiana markets, in Cox's September 1, 2005 letter to the Commission, Cox requested a waiver from the acknowledgment requirements for its Baton Rouge and Lafayette markets until such time as it is feasible to obtain any remaining acknowledgments, and in any event until at least 30 days after the telemarketing ban is lifted by Governor Blanco. Consequently, Cox has excluded these markets from reporting here. As of September 22, Cox has received acknowledgments from [REDACTED] percent of its non-Louisiana subscribers that they have received and understand the notice. An additional {REDACTED} percent have confirmed that they have received the information, either by signing for and picking up a registered letter or by opening an e-mail containing an electronic receipt. In total, [REDACTED] percent of Cox's non-Louisiana VoIP customers have given their direct or implied consent to using Cox's VoIP service. The remaining [REDACTED] percent of Cox VoIP customers either cannot (e.g., because they are not home) or will not provide any kind of acknowledgment, despite Cox's repeated attempts to obtain a response.

3. *Actions Cox will take towards subscribers who do not return acknowledgments*

As discussed in Cox's August 10 and September 1 letters, Cox has initiated a multi-step program to obtain acknowledgments of customers who had telephone service prior to July 29, with an initial letter and sticker, four separate email requests of increasing urgency, continuing multiple telephone calls (up to three per day), and in-person contacts with commercial customers, plus ongoing attempts to educate and obtain acknowledgement from non-responders at every customer touch point. In addition, Cox sent a registered letter to all nonrespondents as of August 22, 2005. Thus, Cox is certain that every subscriber has received the required notice. It is safe to conclude that those subscribers who have not acknowledged receipt and understanding of the notice are refusing to do so even though Cox has taken extraordinary steps to obtain such acknowledgements. Cox is continuing to seek acknowledgement from non-respondents through a variety of means, including the tactics listed above, live phone calls and door-to-door contacts.

As mentioned above, in Cox's September 1 filing, Cox requested a waiver of the acknowledgement requirement for the Baton Rouge and Lafayette, Louisiana, until such time as it is feasible to obtain any remaining acknowledgments, and in any event until at least 30 days after the telemarketing ban is lifted by Governor Blanco. Cox wishes to note that

Louisiana Governor Blanco lifted the ban on telemarketing from several areas of the state, including Cox's Lafayette and Baton Rouge markets, on September 14, 2005, but then reinstituted the ban on September 20, 2005, extending through October 20, 2005. As the Commission is doubtless aware, many New Orleans area businesses and residents have moved, at least temporarily, to places such as Lafayette and Baton Rouge. Demand for Cox's telephone services in these areas has exploded as a result. Cox believes that it will serve the public best by continuing to put all of its efforts in these areas into providing timely service to meet the needs of residents and businesses that are trying to recover and achieve a semblance of normalcy. (Cox is, however, gathering consent for all new VoIP customers during this time in these markets.) Consequently, Cox hereby extends its request for a waiver of the requirement to obtain acknowledgements in Louisiana through at least the date of the November status report due to the Commission. At that time Cox will either confirm that it has restarted gathering acknowledgements from its Louisiana customers or it will request a further extension.

4. *Cox's plans to use soft disconnect.*

Cox will continue to try to obtain acknowledgements from the handful of subscribers who are refusing to provide it (except as described above for certain Cox customers in Louisiana). However, for the reasons described below, Cox has decided not to subject these subscribers to a soft disconnect.

Subscribers subject to a soft disconnect would be able to make calls to 911, but all other calls would be diverted to an interactive voice response system or a live call center representative. Because soft disconnect restricts the subscriber from receiving incoming calls, it also means that the PSAP cannot call the subscriber back in the event of a 911 hang up. This puts the subscriber in a particularly dangerous situation that Cox feels is unwarranted under the circumstances.

As Cox reported in its September 1, 2005 letter to the Commission, there are other considerations that make it difficult for Cox to implement a soft disconnect policy. First, in the absence of an FCC decision addressing the classification of Cox's VoIP services, Cox's status as a CLEC in its VoIP markets appears to place use of a soft disconnect in conflict with some state PUC disconnection rules. In addition, disconnection for failure to return an acknowledgement of receipt of the E911 notice could be treated as a violation of Cox's subscriber tariffs.

Another issue that was uncovered as Cox explored implementing a soft disconnect was the message that incoming callers hear when they attempt to contact the Cox subscriber who has been soft disconnected—"This line is no longer in service." Cox's switch vendor has not developed the ability to insert an alternative message, and it likely would take months to do so. This message would be aggravating for residential customers but it would be competitively harmful to commercial customers, and could lead to complaints and possibly to lawsuits against Cox.

Finally, requiring a soft disconnect could have a significant competitive impact. Incumbent LECs increasingly are engaging in marketing and advertising campaigns (including in markets that do not use IP technology) that inappropriately portray the telephone service Cox and other cable companies offer as unreliable and second class. Cox has built its reputation as a provider of telephone service by providing reliable service to customers that is comparable in quality to that of incumbent local exchange companies. Indeed, Cox has been recognized repeatedly by J. D. Power and Associates for achieving the highest level of customer satisfaction, significantly higher than its incumbent LEC competitors. Requiring Cox to disconnect customers who are receiving service – including E911 – that is fully comparable to that offered by incumbent LECs would create the inaccurate impression that Cox's service is inferior to incumbent LEC offerings.

Given that Cox is fully compliant with the substantive requirements of the E911 Order, that Cox has undertaken extraordinary measures to obtain acknowledgements from all of its VoIP subscribers, that every subscriber received the required notice, that only a small number of subscribers have refused to acknowledge receipt and understanding of the notice, that a soft disconnect could potentially put subscribers at risk, that a soft disconnect would be disruptive to a subscriber who is under no legal obligation to respond to the request for acknowledgement, that a soft disconnect could result in Cox violating state PUC regulations, that a soft disconnect could subject Cox to legal liability, and that a soft disconnect would put Cox at a competitive disadvantage at a time when the Congress and the Commission is trying to foster competition, Cox has concluded that it will not use soft disconnects as a means to obtain the few remaining acknowledgements. Cox will continue to seek other means of contacting, educating, and obtaining acknowledgement from its few recalcitrant subscribers.

5. Contingent Request for Waiver

As described above, Cox has taken extraordinary steps, and will continue to do so, to provide notices to its customers and obtain acknowledgments that those notices have been received. Indeed, some Cox customers have received two letters (one of them via registered mail), four separate emails and as many as 16 telephone calls providing notice and requesting acknowledgment. Those efforts have resulted in Cox obtaining acknowledgments from the overwhelming majority of its pre-July 29 VoIP customers.¹ However, not all of Cox's pre-July 29 customers have provided acknowledgments, and it is unlikely that Cox will be able to obtain acknowledgments from all of these remaining customers, no matter what efforts it undertakes. Consequently, Cox requests a waiver of the acknowledgment requirement for those customers that have not returned acknowledgments to the extent that the Commission deems such a waiver necessary.

¹ As described in Cox's August 10 report, all customers who have purchased VoIP services after July 29 were required to provide an acknowledgment before service was initiated.

A waiver is justified for several distinct reasons. First, Cox is fully compliant with the substantive terms of the Commission's VoIP E911 rules. Cox provides access to E911, call-back and location information in conformance with landline telephone standards and, even though its service is not designed for mobility, provides appropriate mechanisms for customers to notify Cox if they move their customer premises equipment. Cox's customer equipment, as noted above, includes battery backup that will permit calls to 911 even in the event of a power outage, consistent with standard telephone industry practices. Thus, customers who do not return the acknowledgment are not subjected to sub-standard access to E911, but rather have E911 that meets the same standards as that provided by circuit-switched providers. Thus, granting a waiver in this case is appropriate because the waiver is consistent with the underlying purpose of the Commission's VoIP E911 rules, which is to ensure that customers have access to E911 and are apprised of any significant limitations on that access.²

Second, Cox's multiple efforts to provide notice and obtain acknowledgment effectively ensure that all Cox VoIP customers have received the notice contemplated by the Commission's rules. Any customer's decision not to return the acknowledgment reflects a conscious decision not to do so; yet, the same customer also has chosen not to discontinue his or her service from Cox. All of Cox's telephone customers have at least one and often several alternative telephone providers to choose from. Those customers for whom Cox has confirmed receipt of the E911 notice but who have not directly provided acknowledgement have, in essence, voted with their pocketbooks by continuing to use Cox's telephone service. Cutting those customers off from Cox's service would contradict their expressed intentions. As the Commission has held on previous occasions, substantial compliance with the purpose of its rules can justify a waiver request, and Cox's repeated efforts to provide notice and obtain acknowledgments, combined with its very high success rate, demonstrate substantial compliance.³

Third, cutting off customers, either through a soft disconnect or a hard disconnect, will reduce their access to E911 service, rather than enhancing it. Cox's service is sold as a full replacement for incumbent LEC offerings, and so a Cox customer typically does not have another operating phone line. If Cox's service is cut off, then these customers will lose access to E911 entirely until such time as they sign an acknowledgment or sign up for service

² PanAmSat Corp., *Order and Authorization*, 19 FCC Rcd 2012 (2004) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir., 1969)); *Northeast Cellular Telephone Co., L.P. v. FCC*, 857 F.2d 1164, 1166 (D.C. Cir. 1990).

³ See, e.g., *KM Radio of St. John's, Memorandum Opinion and Order and Notice of Apparent Liability*, 19 FCC Rcd 5847 (2004) (waiver of rule requiring mandatory forfeiture of license appropriate when there has been substantial compliance with underlying regulation); *911 Call Processing Modes, Order*, 15 FCC Rcd 3075 (2000) (delayed compliance justified in part by substantial compliance with substantive requirements of underlying rule).

from another carrier. In other words, cutting off service increases the potential harm to these customers, rather than decreasing it.

For all these reasons, grant of a waiver of the acknowledgment requirement for the limited number of customer who have not returned their acknowledgments to Cox is justified to the extent that the Commission deems it necessary for Cox to seek such a waiver.

As noted above, this notice is being submitted in accordance with the Commission's Notice. For the reasons described in Cox's August 10 and September 1, 2005 filings in this matter, submission of this notice, however, does not concede the applicability of the VoIP E911 Order to Cox's voice over IP service, and Cox does not waive its rights in that regard.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,



J.G. Harrington

Counsel to Cox Communications, Inc.

JGH/vll

cc: Byron McCoy
Kathy Berthot
Janice Myles
Best Copy and Printing (redacted version only)